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No. 84-381

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1984

SEAFLITE, INCORPORATED, Petitioner

v.

DIRECTOR, Department of Transportation, State of Hawaii and HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, Respondents

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Petition For Writ of Certiorari to the Hawaii Supreme Court

Reply Brief For Petitioner

SCHWEIGERT & ASSOCIATES

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I. INTRODUCTION

Many of the facts articulated by the Director in the Brief for Respondent Director, Department of Transportation, State of Hawaii (hereafter referred to

as "Director"), are factually incorrect, not found in the record and/or otherwise irrelevant to the arguments before this Court. For example, Seaflite has NEVER had a corporate predecessor despite the Director's reference to one. (Director's Brief at p.2.) However, one misstatement by the Director does bear rebuttal. That is the decision by the Hawaii Supreme Court does not rest on local property law. In fact, it is not supported by any law which is why Seaflite calls it arbitrary. Seaflite's argument on this point follows.

II. ARGUMENT

There is no question that Seaflite's property was taken without due process of law for no compensation was awarded. Interestingly, the Director fails to identify the source of local "property"

law on which the Hawaii Supreme Court decision allegedly rested. Hawaii courts have long since considered landlord/ tenant relationships to be one of contract. Aluli v. Trusdell, 54 Haw. 417, 508 P.2d 1217 (1973). In fact none exists. In short, the decision was arbitrary and paved the way for construction of a government project calling for Seaflite's space. Seaflite is entitled to compensation as part of its due process rights under the Fifth Amendment to the Constitution of the United States. To date this has not occurred.

Please note this issue was specifically raised by Seaflite to the Hawaii Supreme Court. (See Petition at pp.12-13.) At that time the Attorney General complained such argument was a "last

ditch attempt." (Answering Brief, Director, Hawaii Supreme Court, at p.43.) To such claim Seaflite reponded its due process argument was far from a last ditch effort for it was premised by the Fifth Amendment, i.e.,

> The United States Constitution demands: No person shall be . . . deprived of . . . property, without due process of law; nor shall private property be taken for public purpose without just compensation. [U.S.Const., Amend. V.] [Reply Brief of Seaflite at p.2 filed Hawaii Supreme Court 2/22/84.]

The Director's statement the due process argument was not even raised is <u>false</u>. (Director's Brief at pp.1-2, 6-8.)

It must be stressed that under its contract with the Director, Seaflite was obligated to improve its leased space at a cost of at least $2 million. In that regard, it is written:

> The lessee will, at its own cost and expense, and within 60 days after the commencement of its lease,

> commence construction of the hydrofoil terminals and related facilities at a cost of not less than $1,250,000 for the Honolulu harbor premises, not less than $250,000 for the Nawiliwili harbor premises, and not less than $540,000 for the Maalaea Small Boat harbor premises, and will have said improvements completed within two years after the date of the commencement of this lease, free from all liens and claims. [Plaintiff's Exhibit "1", in evidence.]

These improvements were made. Furthermore, the cost of these improvements is debated; however, either figure quoted is high. The Director claims they cost $2.67 million. Seaflite argues the more correct figure is $6.7 million. (Transcript 8/9/82 at 594.)

Although Seaflite does not question the State's right to condemn its property for government projects, it strongly objects to situations wherein the Director is able to confiscate its property, which includes its improvements, without

giving Seaflite any compensation. Remembering there was no finding of fault or breach of lease by Seaflite in the State courts, the Fifth and Fourteenth Amendments are supposed to prohibit such action from occurring.

CONCLUSION

Based on the foregoing arguments as well as those put forth in the Petition filed by Seaflite on September 10, 1984, the Writ should be granted.

DATED: Honolulu, Hawaii, October 19, 1984.

Respectfully submitted,

By: _____
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Attorney for Petitioner

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Proof of Service - Certificate By Bar Member

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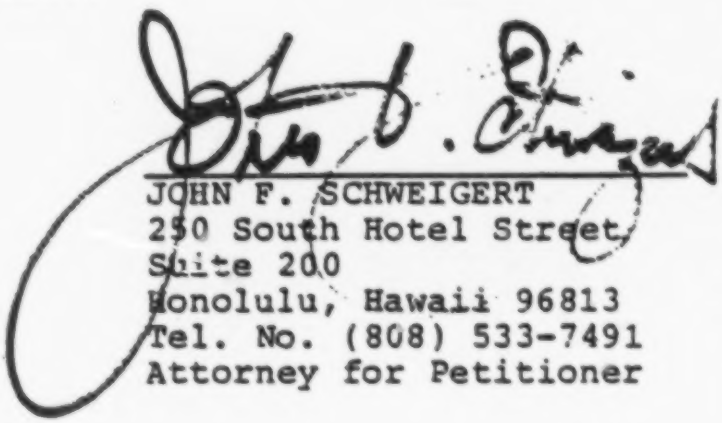
Proof of Service - Certificate
By Bar Member

I, JOHN F. SCHWEIGERT, the attorney for SEAFLITE, INCORPORATED, Petitioner herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that, on the 19th day of October, 1984, I served copies of the foregoing Reply Brief on the parties thereto, as follows:

1. On DIRECTOR, Department of Transportation, State of Hawaii, by leaving three copies thereof at the office of Randall Y.K. Young, Esq., Deputy Attorney General, attorney for Respondent DIRECTOR, Department of Transportation, State of Hawaii, at 214-B Old Federal Building, 335 Merchant Street, Honolulu, Hawaii 98613.

2. On HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, by leaving

three copies thereof at the office of Gary B.K.T. Lee, attorney for Respondent HOKUNANI ASSOCIATES, INC., dba Hokunani Catamaran Cruises, at Suite 1717, Pacific Tower, 1001 Bishop Street, Honolulu, Hawaii 96813.



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